



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

January 23, 1991

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
P.O. Box 99
Huntsville, Texas 77342-0099

OR91-044

Dear Mr. Peck:

You ask whether certain information requested by an inmate, Steven L. Dietzman, is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 9864. You advise that the requested information is not sensitive information within the the Stipulated Modification of the Ruiz Amended Decree. Accordingly Open Records Decision No. 560 (1990) is not applicable.

We have considered the exceptions you claimed, specifically sections 3(a)(1), 3(a)(8), and 3(a)(11), and have reviewed the documents at issue, i.e., Report Nos. SC.14.1297.84.CO and SC.14.1229.84.CO.

With respect to your privacy claims under section 3(a)(1), a previous determination of this office, Open Records Decision No. 579 (1990), a copy of which is enclosed, resolves your request. The behavior alleged in Report No. SC.14.1297.84.CO involves on-duty behavior by a state employee. The behavior alleged in Report No. SC.14.1229.84.CO, while not involving on-duty behavior, involves behavior that, you advise, "represented a fairly serious breach of professional duty, and [the state employee] would undoubtedly have been fired had she not resigned." As the public has an interest in the performance of its employees, the reports may not be withheld on privacy grounds.

With respect to your assertion of the informer's privilege, the names of the inmate informants in Report No. SC.14.1297.84.CO may be withheld. See Open Records Decision No. 579 (1990) (and authorities cited therein for a discussion of the application of the informer's privilege).

With respect to the balance of your claim under section 3(a)(8), you do not advise that any criminal investigation is still pending with respect to these matters nor do you explain, and it is not apparent, how the release of the information will unduly interfere with law enforcement. Id.

With respect to your claim under section 3(a)(11), statements by investigators in the reports are objective statements of their findings. Section 3(a)(11) is intended to protect the internal deliberative process within an agency. See Open Records Decision No. 559 (1990). Accordingly, final findings are not the kind of advice, opinion, and recommendation excepted by section 3(a)(11). See also V.T.C.S. art. 6252-17a, § 6(1).

Finally, the polygraph examinations of persons other than the requestor and statements of the results thereof must be withheld pursuant to V.T.C.S. article 4413(29cc), section 19A. Except as provided above, you must release the requested information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-044.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/le

Ref.: ID# 9864, 11102, 10865

Enclosure: Open Records Decision Nos. 579, 559

cc: Steve Dietzman
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